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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966.

No. 1034

CHESTER STEWART AND BURL BOONE,
*Appellants,*

*vs.*

INDUSTRIAL COMMISSION OF ILLINOIS, ET AL.
(NORTHWESTERN STEEL & WIRE COMPANY, ET AL.),
*Appellees.*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

## JURISDICTIONAL STATEMENT.

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GILBERT FELDMAN,
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THE GUNTHROP-WARREN PRINTING COMPANY, CHICAGO 60

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INDUSTRIAL COMMISSION OF ILLINOIS, ET AL.
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*Appellees.*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

## JURISDICTIONAL STATEMENT.

Appellants appeal from the judgment of the Supreme Court of the State of Illinois, entered on September 16, 1966, dismissing Appellants' appeals from the Circuit Court of Whiteside County, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

### OPINION BELOW.

The final judgment of the Supreme Court of the State of Illinois in these cases was not reported, the Court failing to issue an opinion. A copy of the final judgments are attached hereto as Appendix A and A-1.

## JURISDICTION.

These cases involve actions which arose under both the Illinois Workmen's Compensation Act and the Illinois Workmen's Occupational Diseases Act. Direct appeals from the decision of the Circuit Court of Whiteside County affirming the decision of the Industrial Commission of Illinois were taken to the Supreme Court of the State of Illinois pursuant to the provisions of Rule 28-1A(e) of that Court, Ill. Rev. Stat., chapter 110, #101.28—1A(e) (1963). The final order of the Circuit Court of Whiteside County was entered on August 9, 1965, and Notice of Appeal was filed in that Court October 6, 1965. The Supreme Court of the State of Illinois sustained Appellees' Motion to Dismiss Appellants' Appeal on September 16, 1966, and Notice of Appeal was filed in that Court on December 9, 1966. The jurisdiction of the Supreme Court to review this decision is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Largent* v. *Texas*, 318 U. S. 418; *Lawrence* v. *State Tax Commission*, 286 U. S. 276; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282.

## QUESTION PRESENTED.

Whether the application of Section 19(F)(2) of the Illinois Workmen's Compensation Act, and Section 19(f)(2) of the Illinois Workmen's Occupational Diseases Act, as amended in 1965, such 1965 Amendments effectively curtailing the time for filing a Notice of Appeal from the Circuit Court of Whiteside County, Illinois, to the Supreme Court of Illinois from 60 days to 30 days, without first providing publication or other reasonable or adequate notice of the reduction of the filing period, and without pro-

viding a saving clause, violates the 14th Amendment of the Constitution of the United States?

## STATUTES INVOLVED.

Section 19(f)(2) of the Illinois Workmen's Compensation Act, and Section 19(F)(2) of the Illinois Workmen's Occupational Diseases Act, as amended, are set forth in Appendix B hereto.

## STATEMENT.

Chester Stewart filed a claim with the Illinois Industrial Commission under the Illinois Workmen's Compensation Act. Burl Boone also filed a claim with the Illinois Industrial Commission but under the Illinois Workmen's Occupational Diseases Act. The Illinois Industrial Commission found against both Stewart and Boone, in their respective cases, and they separately filed writs of certiorari to the Circuit Court of Whiteside County, Illinois. The Circuit Court affirmed both decisions of the Industrial Commission and direct appeals were then taken to the Supreme Court of Illinois.

The Notice of Appeal to the Supreme Court of Illinois, in each case, was filed 58 days after entry of the final order entered August 9, 1965 by the Circuit Court of Whiteside County, Illinois. Northwestern Steel & Wire Company, one of the Appellees herein, filed a Motion to Dismiss for Lack of Jurisdiction with the Supreme Court of Illinois on January 20, 1966, alleging that the Notice of Appeal in each case had been filed more than 30 days after entry of the said final order, and was therefore contrary to both the Illinois Workmen's Compensation Act and Illinois Workmen's Occupational Diseases Act, which had been amended effective July 1, 1965. The amendments shortened the time for filing notice of appeal from 60 days to 30 days

after the entry of a final order or judgment of a Circuit Court. The Workmen's Compensation Act. (Ill. Rev. Stat., Chap. 48, § 138.19(F)(2), as amended reads as follows:

> "Judgments and orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon the filing of a Notice of Appeal. Such Notice of Appeal shall be filed with the Clerk of the Circuit Court within 30 days after the entry of the order of that Court. The time herein provided for filing of the Notice of Appeal shall be jurisdictional and shall not be subject to any extension. Except as herein provided, the appeal shall be subject to statute or rules of the Supreme Court."

The Workmen's Occupational Diseases Act (Ill. Rev. Stat. 48, § 172.54(F)(2), as amended, reads the same as the amended section of the Workmen's Compensation Act as set forth immediately above.

In the *Stewart* case, Appellant filed an Answer and Affidavit to the Motion to Dismiss, while in the *Boone* case, Appellant incorporated his Answer and Affidavit to the Motion to Dismiss in his Brief and Argument, and said pleadings are set forth herein in Appendix C and C-1.

How the Federal Question Is Presented:

The Federal question sought to be reviewed was first raised by Appellant in his Answer and Affidavit to the Motion to Dismiss. The Supreme Court of the State of Illinois sustained the Appellees' Motions to Dismiss for Lack of Jurisdiction.

## THE QUESTION IS SUBSTANTIAL.

It is submitted that the decision of the Illinois Supreme Court fails to recognize the importance and application of the 14th Amendment as applied to the facts of the instant case.

When a change is made in the substantive legal rights of an individual such individual is constitutionally entitled to reasonable notice of such change. A statutory amendment affecting the right of appeal and time in which an appeal may be filed is a substantial substantive legal right. Failure to give reasonable and adequate notice, either by publication or otherwise, before changing such a substantive right deprives an individual of due process of law, and the application of such amendment violates the 14th Amendment of the Constitution of the United States.

We believe that the question presented by this appeal is substantial and that it is of public importance.

Respectfully submitted,

BERNARD KLEIMAN,
GILBERT A. CORNFIELD,
GILBERT FELDMAN,
JASON GESMER,
ALTON SHARPE,
Ten South LaSalle Street,
Chicago, Illinois 60603,
*Counsel for Appellant.*

## APPENDIX A.

UNITED STATES OF AMERICA.

State of Illinois, } ss.
Supreme Court. }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of September in the year of our Lord, one thousand nine hundred and sixty-six, within and for the State of Illinois.

Present: Ray I. Klingbiel, Chief Justice
Justice Walter V. Schaefer
Justice Byron O. House
Justice Robert C. Underwood
Justice Harry B. Hershey
Justice Roy J. Solfisburg, Jr.
William G. Clark, Attorney General
Robert G. Miley, Marshal
Attest: Mrs. Earle Benjamin Searcy, Clerk

Be It Remembered, that, to-wit: on the 16th day of September 1966 the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

| | |
|---|---|
| Chester Stewart, *Appellant,* vs. Industrial Commission of Illinois, et al., Northwestern Steel & Wire Company and Lumbermen's Mutual Casualty Company, *Appellees.* | Appeal from Circuit Court, Whiteside County 64 L 164. |

No. 39706

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellees to dismiss this appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

And it is further considered by the Court, that the said appellees recover of and from the said appellant costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of Said Court this 27th day of September, 1966.

/s/ Mrs. Earle Benjamin Searcy,

(Seal) *Clerk, Supreme Court of the State of Illinois.*

## APPENDIX A-1.

UNITED STATES OF AMERICA.

State of Illinois, } ss.
Supreme Court. }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of September in the year of our Lord, one thousand nine hundred and sixty-six, within and for the State of Illinois.

Present: Ray I. Klingbiel, Chief Justice
Justice Walter V. Schaefer
Justice Byron O. House
Justice Robert C. Underwood
Justice Harry B. Hershey
Justice Roy J. Solfisburg, Jr.
William G. Clark, Attorney General
Robert G. Miley, Marshal
Attest: Mrs. Earle Benjamin Searcy, Clerk

Be It Remembered, that, to-wit: on the 16th day of September 1966 the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

No. 39707

Burl Boone, *Appellant,*
*vs.*
Industrial Commission of Illinois, et al.,
Northwestern Steel & Wire Company and Lumbermen's Mutual Casualty Company, *Appellees.*

Appeal from Circuit Court, Whiteside County 63 L 140.

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellees to dismiss this appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

And it is further considered by the Court, that the said appellees recover of and from the said appellant costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of Said Court this 27th day of September, 1966.

/s/ Mrs. Earle Benjamin Searcy,

(Seal) *Clerk, Supreme Court of the State of Illinois.*

## APPENDIX B.

The Workmen's Compensation Act (Ill. Rev. Stat., Chap. 48, § 138.19 (F)(2), as amended reads as follows:

> "Judgments and orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon the filing of a Notice of Appeal. Such Notice of Appeal shall be filed with the Clerk of the Circuit Court within 30 days after the entry of the order of that Court. The time herein provided for filing of the Notice of Appeal shall be jurisdictional and shall not be subject to any extension. Except as herein provided, the appeal shall be subject to statute or rules of the Supreme Court."

The Workmen's Occupational Diseases Act (Ill. Rev. Stat. 48, § 172.54 (F)(2)), as amended, reads the same as the amended section of the Workmen's Compensation Act as set forth immediately above.

## APPENDIX C.

No. 39706.

IN THE SUPREME COURT OF ILLINOIS.

January Term, A. D. 1966.

CHESTER STEWART,
*Petitioner-Appellant,*
*vs.*
INDUSTRIAL COMMISSION OF ILLINOIS AND NORTHWESTERN STEEL & WIRE COMPANY AND LUMBERMEN'S MUTUAL CASUALTY COMPANY,
*Respondents-Appellees.*

Appeal from the Circuit Court of Whiteside County.

Honorable L. L. Winn Judge Presiding.

### MOTION.

Now Come the respondents-appellees, Northwestern Steel & Wire Company and Lumbermen's Mutual Casualty Company, and move this Honorable Court for an order dismissing the within appeal for want of jurisdic on as the Notice of Appeal was filed more than 30 days after the entry of the Whiteside County Circuit Court order. In support of such motion, respondents-appellees set forth the following:

1. The Whiteside County Circuit Court entered an order on August 9, 1965 affirming the Industrial Commission decision.

2. The Notice of Appeal was filed by petitioner-appellant on October 6, 1965, 58 days after the Circuit Court order.

3. Effective July 1, 1965, the Legislature enacted the following statute:

> "Judgments and orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon the filing of a Notice of Appeal. Such Notice of Appeal shall be filed with the Clerk of the Circuit Court within 30 days after the entry of the order of that Court. The time herein provided for the filing of the Notice of Appeal shall be jurisdictional and shall not be subject to any extension. Except as herein provided, the appeal shall be subject to statute or rules of the Supreme Court." Ill. Rev. Stat., Ch. 48 § 138.19 (f)(2).

Respectfully submitted,

DOUGLAS F. STEVENSON,
*Attorney for Northwestern Steel & Wire Company and Lumbermen's Mutual Casualty Company.*

STEVENSON, CONAGHAN, HACKBERT,
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208 South LaSalle Street,
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## APPENDIX C-1.

No. 39706.

IN THE ILLINOIS SUPREME COURT.

January Term, A. D. 1966.

CHESTER STEWART,
*Plaintiff-Appellant,*
*vs.*
INDUSTRIAL COMMISSION OF ILLINOIS AND NORTHWESTERN STEEL & WIRE COMPANY AND LUMBERMEN'S MUTUAL CASUALTY COMPANY,
*Defendants-Appellees.*

Appeal from the Circuit Court of Whiteside County.

Honorable L. L. Winn, Judge Pesiding.

### ANSWER IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS AND SUGGESTIONS TO THE COURT.

Now comes plaintiff-appellant Chester Stewart and moves this Honorable Court to deny the Motion of Northwestern Steel & Wire Company to dismiss the above-entitled cause and in support thereof states the following:

The Circuit Court of Whiteside County entered its Order affirming the Decision of the Industrial Commission on August 9, 1965. Appellant filed his Notice of Appeal with that Court on October 6, 1965, believing that he had 60 days from the date of said Order to take such action. This was because every publication, treatise and reference con-

taining the law relating to Supreme Court appeals so stated. Appellee moved to dismiss the appeal on or about January 23, 1966, alleging that an amendment became effective July 1, 1965 requiring notice of appeal to be filed within 30 days after entry of the order of the Court.

Appellant urges this Court to deny Appellee's motion and asserts that if such motion were granted, under the facts and circumstances here present, Appellant would be denied his constitutional rights in that it would be violative of due process guarantees contained in both the United States Constitution and the Constitution of Illinois.

When a change is made in the substantive rights of an individual he is constitutionally entitled to reasonable notice of such a change. There can be no argument that an amendment affecting the right of appeal and time in which an appeal may be filed is a substantive right. Ordinarily, reasonable notice of a change in substantive rights is met by publication both of the newly enacted language and the date of its becoming effective. A failure to give reasonable and adequate notice before changing a substantive right deprives an individual of due process of law. In this instance, it was impossible for Appellant, any individual or any attorney to know of the change effective July 1, 1965 in Ill. Rev. Stat., Chap. 48, Section 138.19 (f)(2):

> "Judgments and orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon filing of a Notice of Appeal. Such Notice of Appeal shall be filed with the Clerk of the Circuit Court within 30 days after the entry of the order of that Court. The time herein provided for the filing of the Notice of Appeal shall be jurisdictional and shall not be subject to any extension. Except as herein provided, the appeal shall be subject to statute or rules of the Supreme Court."

In further support of Appellant's Answer in Opposition to Appellee's Motion to Dismiss and Suggestions to the Court, the affidavit of Jason Gesmer is attached hereto.

Respectfully submitted,

KLEIMAN, CORNFIELD & FELDMAN,
*Attorney for Plaintiff-Appellant*
*Chester Stewart.*

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318 West Randolph Street,
Chicago, Illinois 60606,
RAndolph 6-2922.

STATE OF ILLINOIS,
COUNTY OF COOK. } ss.

AFFIDAVIT.

JASON GESMER, being first duly sworn, upon oath deposes and says:

1. He is a partner in the law firm of Kleiman, Cornfield & Feldman and is the attorney charged with the handling of workmen's compensation claims for the firm.

2. Affiant says that on October 6, 1965, he filed a Notice of Appeal with the Circuit Court of Whiteside County, said appeal relating to a Decision of that Court entered August 9, 1965, affirming a Decision of the Industrial Commission.

3. Your affiant further says that when advised by counsel for Appellee shortly after October 6, 1965 that the Notice of Appeal had been filed more than 30 days after entry of the Order and contrary to the Statute effective July 1, 1965, he immediately began a comprehensive search of the law to verify the statement made by Appellee's counsel.

Your affiant did not know and did not have notice that a change had been made in the time allowed for the filing of a notice of appeal in workmen's compensation cases.

4. Affiant states that he consulted the Smith-Hurd Annotated Statute Advance Sheets, Daily Law Bulletin, check lists from the Illinois Bar Association, periodicals received in his office and the Chicago Bar Association Law Library and he was unable to locate any publication of or reference to the alleged statutory change as it might relate to the Workmen's Compensation Act. It was not until December of 1965 that the State of Illinois published the Workmen's Compensation Laws effective July 1, 1965, and made them available for the public as well as for attorneys.

5. Your affiant also participated in several sessions of the Industrial Commission Labor-Management Committee created to amend the Workmen's Compensation and Occupational Diseases Acts, said sessions being held in the Spring of 1965. In not one of the meetings he attended and in which he participated was there any mention made or discussion of the proposed change in the time allowed for filing a Notice of Appeal.

Further, Affiant sayeth not.

JASON GESMER.

Subscribed and Sworn to before me this 30th day of June, 1966.

NADINE DENNIS,
*Notary Public.*